Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. 1998

SHONG-CHING TONG

Petitioner

v.

JAMES MCMAHON. JOSEPH REICHMANN.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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130 pp

QUESTIONS PRESENTED

1. WHETHER DISTRICT JUDGE GOERGE H. KING SHOULD IGNORE THE CASE SCHOOL DIST. OF KASAS CITY, MO. v. STATE OF MO. WHEN HE DENIED PETITIONER'S MOTION TO DISQUALIFY DISTRICT JUDGE MANUEL L. REAL AND MOTION FOR RECONSIDERATION?

2. WHETHER COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD IGNORE THE ISSUE OF DISQUALIFICATION OF DISTRICT JUDGE MANUEL L. REAL AFTER PETITIONER FILED PETITION FOR WRIT OF MANDAMUS AND RAISED AN ISSUE IN PETITIONER'S APPEAL?

3. WHETHER DISTRICT JUDGE MANUEL L. REAL'S 1/29/97, 1/30/97, AND 3/21/97 ORDERS VIOLATED THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION?

4. WHETHER DISTRICT JUDGE MANUEL L. REAL'S 1/29/97, 1/30/97, AND 3/21/97 ORDERS VIOLATED FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

5. WHETHER THE COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD IGNORE ITS OWN PRECEDENTS AS HELD IN MOY v.. U. S.; O'LAUGHLIN v. DOE; DELONG v. HENNESSEY, ETC.?

TABLE OF CONTENTS

ORDERS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 3

1. DISTRICT JUDGE GOERGE H. KING SHOULD NOT IGNORE THE CASE SCHOOL DIST. OF KASAS CITY, MO. v. STATE OF MO. WHEN HE DENIED PETITIONER'S MOTION TO DISQUALIFY DISTRICT JUDGE MANUEL L. REAL AND MOTION FOR RECONSIDERATION 3

2. THE COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD NOT IGNORE THE ISSUE OF DISQUALIFICATION OF DISTRICT JUDGE MANUEL L. REAL AFTER PETITIONER HAD FILED PETITION FOR WRIT OF MANDAMUS AND RAISED THE ISSUE IN PETITIONER'S APPEAL 7

3. DISTRICT JUDGE MANUEL L. REAL' 1/29/97, 1/30/97, AND 3/21/97 ORDERS HAD VIOLATED THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION 8

4. DISTRICT JUDGE MANUEL L. REAL'S 1/29/97, 1/30/97, AND 3/21/97 ORDERS HAD VIOLATED FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION 12

5. THE COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD NOT IGNORE ITS OWN PRECEDENTS AS HELD IN MOY v. U. S.; O'LAUGHLIN v. DOE: DELONG v. HENNESSEY. ETC. 13

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Hernandez, et al. v. City of El Monte, et al., 3/4/98 Los Angeles Daily Journal, DAR 2071 5, 11

School Dist. of Kasas City, Mo. v. State of Mo 438 F.Supp. 830 (1977, W.D. Missouri, W. D.) 6

Amwest Mortgage Corp. v. Grady, 925 F2d 1162, 1165 (9th Cir. 1991) 9

O'Loughlin v. Doe, 920 F2d 614, 617 (9th Cir. 1990) 9, 14

Neitzke v. Williams 490 US 319, 325-327, 109 S.Ct. 1827, 1831-1823 (1989) 10

Gardener v. Poque, 528 F2d 548 (9th Cir. 1977) 10

In Petition of General Motors Corp (1962) 182 N.E.2d 815 10

U. S. v. Flynt, 756 F.2d 1352 (9th Cir. 1985) 11

In re Matter of Stephen Yagman (9th Cir. 1986) 11

Moy v. U. S. (9th Cir. 1990) 906 F.2d 467, 470 13

DeLong v. Hennessey, 912 F.2d 1114, 1147-49 (9th Cir. 1990) 14

Oliver 682 F.2d at 455 14

Pavilonis v. King 626 F.2d 1075, 1079 (1st Cir.) 15

In re Powell 851 F.2d 427, 431 (D.C. Cir. 1988) 15

Supreme Court Justice Stephen J. Field, 168 U.S. 716 (1897) 16

STATUTES

28 U.S.C. Section 1254 (1) 2

28 U.S.C. Section 144 2

28 U.S.C. Section 455 (a) 3

First Amendment to the United States Constitution 2, 8, 11

Fourteenth Amendment to the United States Constitution 2, 12, 13

OTHER RESOURCES

Benjamin Weintraub and Allen N. Resnick's Bankruptcy Law Manual, 3rd Ed., Warren, Gorham & Lamont, P. 3 - 24 (3) 12

LIST OF APPENDIX

A - Memoranndum. United States Court Of Appeals for the Ninth Circuit, 5/20/98

B - Appellant's Opening Brief submitted to Court of Appeals for the Ninth Circuit

C - Order, United States District Court Central District of California

D - Order To Show Cause, United States District Court Central District of California

E - Plaintiff's Opposition to Defendants' Motions; Request for Judicial Notice; Memorandum of Points And Authorities and Declaration in Opposition to Motions

F - Notice of Motion and Motion to Disqualify District Judge Manuel l. Real; Request For Judicial Notice; Memorandum of Points and Authorities and Declaraion in support thereof

G - Notice of Motion and Motion for Reconsideration of Court's Ruling RE: Motion to Disqualify District Judge Manuel L. Real; Memorandum of Points and Authorities and Declaration in support thereof

Petitioner prays that a Writ of Certiorari be issued to review the Memorandum of the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") filed on May 20, 1998, because the panel has ignored its own precedents and orders of district judge Manuel L. Real ("Real") had violated the First and Fourteenth Amendments to the United States Constitution.

MEMORANDUM AND ORDERS BELOW

The Memorandum of the Ninth Circuit was filed on May 20, 1998 and is printed in Appendix A. All other related orders of district judge Real, and other related court filings, are printed in Appendixes B through G.

JURISDICTION

The Memorandum of the United States Court of Appeals for the Ninth Circuit was filed on May 20, 1998. The jurisdiction

of this Court rests on 28 U.S.C. Section 1254 (1).

STATUTORY PROVISIONS INVOLVED

AMENDMENT ONE TO THE CONSTITUTION:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the peolpe peaceably to assemble, and to petition the government for a redress of grievances.

Section One of the AMENDMENT FOURTEENTH TO CONSTITUTION

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 144

> Whenever a party to any proceeding in a district court makes and files

a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party. such judge shall proceed no further therein. but another judge shall be assigned to hear such proceeding.

28 U.S.C. Section 455 (a):

A judge shall disqualify himself in any proceeding in which "his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

A. Procedural History:

Please see **Procedural History** contain -ed in Appendix B's Statement of the Case.

B. Statement of Facts:

Please see **Statement of Facts** contain -ed in Appendix B's Statement of the Case.

REASONS FOR GRANTING THE WRIT

1. DISTRICT JUDGE GOERGE H. KING SHOULD NOT IGNORE THE CASE SCHOOL DIST. OF KASAS CITY. MO. v. STATE OF MO. WHEN HE DENIED PETITIONER'S MOTION TO DISQUALIFY DISTRICT JUDGE MANUEL L. REAL AND MOTION FOR RECONSIDERATION

On or about February 28, 1997 at about 12:12 p.m., petitioner filed a "Motion to disqualify district judge Manuel L. Real, etc." (Appendix F). The motion was referred to district judge Goerge H. King ("King"), who denied petitioner's motion immediately without a hearing.

On or about March 6, 1997, petitioner filed a "Motion for Reconsideration, etc.", which was again denied by district judge King without a hearing even though a hearing date was calendared on March 31, 1997 at 9:00 a. m. (Appendix G).

Shortly thereafter, petitioner filed a "Petition for Writ of Mandamus" with the "Ninth Circuit" to review district judge King's denial of motions to disqualify district judge Real and to reconsider his denial of motion. Petitioner has not received any ruling regarding the Petition for Writ. In many instances, the Ninth

Circuit has not sent some rulings or other court papers to petitioner even petitioner's mails were mailed with "Certified Mail, Return Receipt Requested".

As stated in petitioner's "Motions" and the "Appellant's Opening Brief" (Appendixes B, F, G), **if district judge King could rule on petitioner's "motions" without any hearing, then, district judge Real had no reason to accuse petitioner for "civil contempt" (which was in violation of Due Process)** for not appearing at district judge Real's OSC.

As Appendixes C and D demonstrate, district judge Real did not give notice and opportunity to oppose his consolidations of unrelated cases and his order to the Clerk of District Court and Bankruptcy Court not to accept petitioner's filing of new matters.

In Hernandez, et al. v. City of El

Monte, et al., 98 Daily Journal DAR 2071 (3/4/98 Los Angeles Daily Journal), the "Ninth Circuit" reversed district judge Real's dismissal of Hernandez, because district judge Real thought Hernandez was doing "Judge Shopping".

In School Dist. of Kasas City, Mo. v. State of Mo 438 F.Supp. 830 (1977, W.D. Missouri, W. D.), district judge John W. Oliver expressed his and other judge's expressions regarding judicial officials Impartiality:

> "Judge would nonetheless recuse himself on his own motion pursuant to broader command of Canon 2 of the Code of Judicial Conduct approved by the Judicial Conference of the United States".
>
> "a judge 'shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned' has been broadened by the additional requirements contained in the Code of Judicial Conduct for United States Judges. Canon 2 of that Code requires that a judge not only avoid impropriety

> in regard to the conduct of his duties but that he should avoid even the appearance of impropriety in the conduct of his office."

In the instant case, ample facts and evidence demonstrate district judge real not only has abused his judicial position, district judge Real has also shown his persistent disregard of "Law and Rule". Thus, the Ninth Circuit and district judge King erred in ignoring petitioner's motions to disqualify district judge Real.

2. THE COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD NOT IGNORE THE ISSUE OF DISQUALIFICATION OF DISTRICT JUDGE MANUEL L. REAL AFTER PETITIONER HAD FILED PETITION FOR WRIT OF MANDAMUS AND RAISED THE ISSUE IN PETITIONER'S APPEAL

As the case cited and facts stated in the No. 1's paragraph regarding the disqualification of district judge Real, district judge King and the panel erred in ignoring petitioner's motions and

appeal to disqualify district judge Real after district judge Real shopped for cases and after he failed to hold hearing to consolidate the cases on 1/30/97.

3. DISTRICT JUDGE MANUEL L. REAL'S 1/29/97, 1/30/97, AND 3/21/97 ORDERS HAD VIOLATED THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

District judge Real's 1/29/97 and 1/30/97 orders are printed in Appendixes C and D. **True and correct copy of district judge Real's 3/21/97 order is attached with this Petition**, because the Court will be easy to review it.

If the court would review all Exhibits contained in the Appeal and Petitions filed with the "Ninth Circuit", the Court would find out that all of those filings:

1) did not lacking in "evidentiary support" or likely evidentiary support;

2) were "warranted by existing law" or a "nonfrivolous" arguments for exten -sion or change in existing law:

3) were not filed for "Improper purpose".

4) can show those obnoxious/wacky judicial bad apples did something wrong. The facts those people took cover under various immunities proved he/she/they had disregarded the rules and laws and had betrayed their oaths of offices.

In Amwest Mortgage Corp. v. Grady, 925 F2d 1162, 1165 (9th Cir. 1991), the Court defined the "Frivolous" Standard as: An appeal is "frivolous" if the results are obvious or the arguments of error are wholly without merit.

In O'Loughlin v. Doe, 920 F2d 614, 617 (9th Cir. 1990), the Court held that An issue is "frivolous" if it has "no arguable basis in fact or law."

In Neitzke v. Williams 490 US 319, 325-327, 109 S.Ct. 1827, 1831-1823 (1989), the Supreme Court held that:

> "The Term 'Frivolous' embraces not only the inarguable legal conclusions but also the faciful factual allegations."

In Gardener v. Pogue, 528 F2d 548 (9th Cir. 1977), the Court defined the bad faith as follows:

> "An Appeal is in 'Good Faith' so long as it seeks review of any issue that is not Frivolous."

In Petition of General Motors Corp. (1962) 182 N.E.2d 815, the definition of "Meritorious" case is one that is worthy of presentation to court, not one which is sure of success. M.G.L.A.c. 214 Section 28.

The General Motors court further stated that any genuine questions of law were involved in the proccedings below giving rise to a meritorious cause for appeal.

Exhibits contained in Petitioner's "Excertps of Record" can show the panel and district judge Real had abused their power. Especially, Real had **manifested**, together with U. S. v. Flynt, 756 F.2d 1352 (9th Cir. 1985) and In re Matter of Stephen Yagman (9th Cir. 1986), 796 F.2d 1165, Hernandez, et al. v. City of El Monte, et al., 98 Daily Journal DAR 2071 (3/4/98, Los Angeles Daily Journal), **the persistent disregard of Federal Rules and Laws**.

The First Amendment of the U. S. Constitution provides that Congress shall make no law abridging the right of people to petition the government **for a redress of grievances**. Thus, district judge Real's 1/29/97, 1/30/97, and 3/21/97 Orders could be perceived to be tanta-mount to Cersorship and/or Dictatorship.

4. DISTRICT JUDGE MANUEL L. REAL'S 1/29/97, 1/30/97, AND 3/21/97 ORDERS HAD VIOLATED FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Per Fourteenth Amendment to the U. S. Constitution, a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.

In Benjamin Weintraub and Alan N. Resnick's "Bankruptcy Law Manual", Third Edition, Warren, Gorham & Lamont, page 3 -24, paragraph (3) - The time to make an objection - the Manual states:

> "To object to the discharge of a debt, a Creditor must file a writ -ten complaint with the Bankruptcy Court. The Complaint must be filed within 60 days of the first date set by the court for the meet -ing of Creditors."

Petitioner, as Creditors, has every right to object to debtor(s)' fraudulent, dishonest, and false Chapter 7 Bankruptcy Petitions to wipe out Petitioner's

judgments against debtors for rents owed and for damages caused by them.

In district judge Real's orders, the facts that he could not cite any law in each case supporting those obnoxious/ wacky judicial officials' wrong doings clearly show all those listed cases were not based on similar claims or involving the same transaction or event as district judge Real asserted. Thus, district judge Real's orders had violated the Fourteenth Amendment to the Constitution.

5. THE COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD NOT IGNORE ITS OWN PRECEDENTS AS HELD IN MOY v. U. S.; O'LAUGHLIN v. DOE; DELONG v. HENNESSEY, ETC.

In Moy v. U. S. (9th Cir. 1990) 906 F.2d 467, 470, the Court held that an injunction cannot issue merely upon a showing of litigiousness. The plaintiff's claims must not only be numerous, but also

be patently without merit.

In O'Loughlin v. Doe (9th Cir. 1990) 920 F.2d 614, 617, the court stated:

> "This Circuit recently announced guidelines to maintain this delicate balance between broad court access and prevention of court abuse:
>
> (1) a plaintiff must be given adequate notice to oppose a restrictive pre-filing order before it entered; (2) a trial court must present an adequate record for review by listing the case filings that support its order; (3) the trial court must further make substantive findings as to the frivolousness or harrass-ing nature of the plaintiff's filings; and (4) the order must be narrowly tailored to remedy only the plaintiff's particular abuses (DeLong v. Hennessey, 912 F.2d 1114, 1147-49 (9th Cir. 1990))".

In DeLong v. Hennessey (9th Cir. 1990) 912 F.2d 1144, 1147, the court noted that:

> "Pre-filing orders should rarely be filed. See e.g., Oliver, 682 F.2d at 455 (an order imposing an injunc-tion 'is an extreme remedy, and should be used only in exigent

circumstances'): Pavilonis v. King 626 F.2d 1075, 1079 (1st Cir.) ('The use of such measures against a pro se plaintiff should be approached with particular caution.') cert. denied, 448 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34 (1980); In re Powell 851 F.2d 427, 431 (D.C. Cir. 1988) (per Curirm) (Such order should ' remain very much the exception to the general rule of free access to the courts.') (Quoting Pavilonis, Supra).

"The order has no boundaries. Compare Moy, 906 F.2d at 470. If we are to permit pre-filing restric-tive orders, these orders must be narrowly tailored . . . . Narrowly tailored orders are needed 'to prevent infringement on the litigator's right of access to the courts.'"

The aforesaid cases can prove the panel should not ignore its precedents, because district judge Real's 1/29/97, 1/30/97 and 3/21/970 orders not only have violated the Ninth Circuit's precedents, they could be also perceived to be tantamount to Censorship and/or Dictator-ship just because petitioner has sued

those obnoxious/wacky judicial officials.

CONCLUSION

Late Supreme Court Justice Stephen J. Field, 168 U.S. 716 (1897) had expres-sed "Senators represent their States, and Representatives their constituents, but this court stands for the whole country, and as such it is truly of the people, by the people, and for the people. It has no power to legislate, It cannot appropriate a dollar of money. It carries neither the purse nor the sword. But it possesses the power of declaring the law, and in that is found the safe guard which keeps the whole mighty fabric of govern-ment from rushing to destruction. This negative power, the power of resistence, is the only safety of a popular govern-ment."

Supreme Court Justice Mr. STEVENS has

stated Freedom of access to the courts is a cherished value in our democratic society. Incremental changes in settled rules of law often result from litigation. There is, and should be, the strongest presumption of open access to all levels of the judicial system. Creating a risk that the invocation of the judicial process may give rise to punitive sanction simply because the litigant's claim is unmeritorious could only deter the legitimate exercise of the right to seek a peace redress of grievances through judicial means.

Model Rules of Professional Conduct and Code of Judicial Conduct, Rule 3.1 provides **An action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the**

action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

The facts that there is no law barring people to sue those unethical, unprofessional, and obnoxious/wacky judicial officials clearly show district judge Real's Orders are tantamount to the Judicial Oppression.

In light of the foregoing points and authorities and the attached Appendixes, Petitioner respectfully requests that a Writ of Certiorari be issued to review the Ninth Circuit's Memorandum and to review district judge Real's orders

because the panel, district judge King, and district judge Real had failed to disburse of justice and wisdom as they sould be faithful to discharge their duties.

Dated: August 7, 1998

Shong-Ching Tong
Petitioner Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHONG-CHING TONG.	)	No. 97-55623
	)	
Appellant.	)	D.C. No. CV 95
	)	
v.	)	MEMORANDUM*
	)	
JAMES MCMAHON.	)	FILED MAY
JOSEPH REICHMANN.	)	20, 1998
	)	
Appellees.	)	CATHY A. CATTERSON. CLERK. U.S. COURT OF APPEALS

Appeal from the United States District Court for the Central District Of California
Manuel L. Real. District Judge. Presiding

Submitted May 14, 1998**

Before: SCHROEDER. TROTT. and FERNANDEZ. Circuit Judges.

Shong-Ching Tong appeals pro se the district court's order dismissing six consolidated civil rights actions pursuant to Fed.R.Civ.P. 12(b)(6).

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Tong also appeals the district court's imposition of a vexatious litigant order. We have jurisdiction under 28 U.S.C. Section 1291. We review the Fed.R.Civ.P. 12(b)6) dismissal de novo. see Mullis v. United States Bankr. Court. 828 F.2d 1385, 1388 (9th Cir. 1987), and the vexatious litigant order for an abuse of discretion. see Moy v. United States. 906 F.2d 467, 469 (9th Cir. 1990). We affirm.

The district court properly dismissed Tong's claims against the municipal court judges and the municipal court commission -er because these defendants are entitled to absolute immunity. see Franceschi v. Schwartz, 57 F.3d 828, 830 (9th Cir. 1995) (per curiam); Mullis. 828 F.2d at 1390.

** The panel unanimously finds this case suitable for decision without oral argument. see Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

The district court did not abuse its discretion by imposing a vexatious litigant order. The district court provided Tong with notice and an opport-unity to oppose the order, developed a listing of Tong's numerous frivilous and harassing case filings, and narrowly tailored the order by preventing future filings without district court permission based on the same subject matter involved in Tong's previous filings. see O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990). We also reject Tong's conten-tion that the district court abused its discretion in CV 96-8467 by enjoining any further filings until pending matters were determined.

The district court did not abuse its discretion by denying Tong's motion to disqualify the district judge. see Thomassen v. United States, 835 F.2d 727,

732 (9th Cir. 1987).

We do not address Tong's contentions regarding Tong v. Garcia, No. CV 97-0906 (C. D. Cal. Mar. 21, 1997), because they were addressed in Tong v. Garcia, No. 97-55550, unpublished memorandum disposition (9th Cir. Apr. 22, 1998). We also do not address Tong's contention that the district judge violated Tong's constitutional rights by issuing a warrant for his arrest as that is properly before us. Tong's remaining contentions lack merit.

AFFIRMED.

I.

STATEMENT OF JURISDICTION

Jurisdiction of the District Court arose out of and was based on 28 U.S.C. Sections 1331 and 1343(3).

District judge Manuel L. Real ("Real") dismissed the plaintiff's[1] actions and adopted defendants', James W. McMahon ("McMahon") and Joseph Reichmann ("Reichmann"), order barring plaintiff further filing of action (EX. 12).[2]

Said orders were entered on March 20 and 21, 1997. Plaintiff filed his "Notice of Appeal" on April 18, 1997 (EX. 13).

---

[1] Plaintiff/Appellant will be referred to herein as "Plaintiff" and Defendants/ Appellees as "Defendants".

[2] References to "EX__" are to Exhibit(s). "ER ___" are to pages in the Excerpts of Records, Volume 1, and "Vol 2 ER ___" are to pages in the Excerpts of Records, Volume 2 filed concurrently herewith.

Said notice was timely according to Fed. R.App.P. 4 (a)(1).

This Court has jurisdiction pursuant to 28 U.S.C. Sections 158(d) and 1291 in that, orders were entered on March 20 and 21, 1997 (EX. 12).

II.

ISSUES ON APPEAL

1. Whether district judge Real abused his discretion in ordering the Clerks of the District Court and Bankruptcy Court not to accept Plaintiff's filings of any new action.

2. Whether district judge Real's 1/29 /97 Order was lawful and constitutional.

3. Whether district judge Real's 1/29 /97 Order manifests his persistent disre -gard of Federal Laws and Rules.

4. Whether district judge Real have the power to order the Clerk of the Bank -ruptcy Court not to accept Plaintiff's

filing of a complaint objecting the discharge of debtor's debts?

5. Whether District judge Real abused his discretion in issuing the "Warrant of Arrest" to arrest Plaintiff.

6. Whether District judge Real should ignore the Motion to Disqualify him while the Motion was pending.

7. Whether district judge Goerge H. King ("King") had abused his discretions in denying Plaintiff's Motion to Disquali -fy district judge Real and Motion for Reconsideration.

8. WHETHER PLAINTIFF HAD THE RIGHT TO SUE MARTIN L. GOETSCH AND S. CLARK MOORE, ET AL. IN CASE NOS. CV 96-7809 AND CV 96-8755 AS ASSERTED.

9. WHETHER MARTIN L. GOETSCH AND S. CLARK MOORE'S ACTS IN NO. 8 WERE JUDICIAL ACTS AFTER THEY HAVE REPEATEDLY FAILED TO

DISCHARGE THEIR DUTIES FAITHFULLY, ETHICALLY, AND PROFESSIONALLY.

10. WHETHER DEFENDANTS' ACTS AND CONDUCT AS ASSERTED HAD VIOLATED THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA).

11. Whether district judge Real abused his discretion in dismissing of plaintiff's Bankruptcy Appeal.

12. Whether district judge Real had violated Due Process of Law in dismissing of plaintiff's Bankruptcy Appeal.

III.

STANDARD OF REVIEW

The Appellate Court is asked to review the issues nos. 8, 9, and 10 re district judge Real's orders de novo because they involve predominantly legal issues.

The Appellate Court is asked to review Issue no. 7 whether district judge King had abused his discretions in denying of plaintiff's motions to disqualify dis-

trict judge Real and for reconsideration (Thomassen v. United States, 835 F.2d 727 (9th Cir. 1987)).

The Appellate Court is asked to review the issues nos. 1 thru 6 under the standard of abuse of discretion.

The Appellate court is asked to review issues nos. 11 and 12 re district judge Real's order dismissing plaintiff's Bankruptcy Appeal under the standard of abuse of discretion (In re Financial Corp. of American, 114 B.R. 221 (9th Cir. BAP 1990)).

IV.

STATEMENT OF THE CASE

A. Procedural History:

On October 5, 1997, plaintiff filed a Complaint for damages against defendants McMahon and Reichmann for their violations of plaintiff's constitutional rights and the Americans with Disabilities Act of 1990 ("ADA"), inter alia.

On January 19, 1996, defendants McMahon and Reichmann filed their motion, which was under submission from February 12, 1996.

The instant case in the District Court had been under submission since February 12, 1996 (EX. 3) before district judge Real shopped for the case.

On November 16, 1996, district judge Robert M. Takasugi ("Takasugi") disqualified himself from the instant case (ER 110).

The instant case, after district judge Takasugi self-recused himself from the case (ER 110) and the Clerk's Office was in violation of General Order 224 and Local Rule 4.1 promulgated by the District Court, was assigned to district judge Real.

On January 29, 1997, district judge Real issued an Order in case no. CV 96-8464 directing Clerks of the District Court and the Bankruptcy Court not to accept

plaintiff's filing of any further action (EX. 8).

On January 30, 1997, district judge Real's "Order to Show Cause" was filed (EX. 8).

On February 28, 1997, plaintiff filed a "Notice of Motion and Motion to Disqualify District Judge Real: Request for Judicial Notice, etc." (EX 10) after district judge Real had closed minds on key issues (ER 111 - 114: EXS. 14 thru 20) and after he had no jurisdiction over case no. CV 96-4488 after a "Notice of Appeal" had filed (Vol 2, ER 15, 16).

On February 28, 1997, at about 12:12 p. m., Plaintiff filed the "Plaintiff's Response to Order to Show Cause" (EX. 9).

On March 3, 1997, district judge Real, ignored the Motion to Disqualify him, held a hearing regarding the "Order to Show Cause" and issued a "Warrant of Arrest" to

arrest Plaintiff on ground that Plaintiff did not attend the hearing in spite of the facts that Plaintiff has been ill, is a Disabled Person, and district judge Real could rule on the briefing papers as per FRCP 78 and Rules 7.1 and 27.1 of the District Court's Rules (EX. 10).

On or about March 4, 1997, plaintiff received the District Court Clerk Office's "Referral of Motion to Disqualify Judge/ Magistrate Judge", which was dated on 2/28/97 (ER 172, 173). In the "Referral" the Clerk's Office stated that also in accordance with Sections 4.0 and 9.0 of General Order 224, all proceedings will be stayed until the determination of this Motion.

On or about March 5, 1997, Plaintiff received the Clerk's Office "Civil Minutes -- General", which was dated 2/28/97 and mailed on 3/3/97 (ER 174, 175). Dis

-trict judge King had denied the "Motion to Disqualify" district judge Real without a hearing and was within a very short period of time prior to any opposition papers filed.

On March 7, 1997, at about 10:00 a. m., while Plaintiff's "Notice of Motion and Motion for Reconsideration" was being filed with the District Court Clerk's Office (EX. 11), Mr. Fred Ressig, who stated that he is with the U. S. Marshal's Office, called Plaintiff and told Plaintiff that he was given a "Warrant" from district judge Real to arrest Plaintiff.

On March 7, 1997 at about 2:20 p. m., Ms. Esther Chow, as requested by Plaintiff, went to the District Court Clerk's Office and the Marshal's Office to verify Mr. Ressig's statements. Ms. Chow only learned from a deputy clerk that there is a "Warrant" in the Computer (ER 175-1).

But she could not find any documents regarding the "Warrant".

On December 5, 1996 in the United States District Court, Central District of California, Eastern Division (Riverside, California), plaintiff filed a civil complaint for damages. CV 96-8464 (8467)-R(BQR), against those named defendants for violations of civil rights, First, and 14th Amendments; Obstruction of Justice; Abuse of Process; Unlawful Discrimination based on Race and National Origin; RICO and Bankruptcy Frauds; Unlawful Practice Law Without License; Unlawful Assisting Unlicensed People Practicing Law (EX. 18).

Case no. CV 96-8464, after the Riverside Deputy Clerk called the Los Angeles Office and was in violation of General Order 224 and Local Rule 4.1 promulgated by the District Court, was assigned to district judge Real and magistrate judge

Brian Q. Robbins ("Robbins").

On January 24, 1997, Plaintiff filed the "Plaintiff's Opposition to County of Riverside's Motion to Dismiss, etc.", case no. CV 96-8464, after Riverside Sheriff Department had been served the Complaint and filed a "Motion to Dismiss".

While County of Riverside's motion was under submission and the Complaint was being served on other defendants, district judge Real issued his Order on January 29, 1997 (EX. 8) dircting the Clerks of the District Court and Bankruptcy Court not to accept Plaintiff's filings of any new action.

On February 3, 1997, the Clerk's Office of the Bankruptcy Court notified plaintiff that plaintiff's Bankruptcy Appeal was referred to "Eastern Division". Later, district judge Real shopped for the Bankruptcy Appeal, case no. CV 97-0906

(Vol 2 ER 142).

On February 18, 1997, plaintiff filed copies of "Bankruptcy Court's Judgment and Findings of Fact and Conclusions of Law" with the Clerk's Office of the District Court as directed (Vol 2 ER 144).

On March 19, 1997, plaintiff filed the "Appellant's Opening Brief" and "Records", CV 97-0906, with the Clerk's Office of the District Court as directed.

On March 25, 1997, plaintiff received district judge Real's "Order of Dismissal" (EX 12).

On March 20, 1997, district judge Real issued an order dismissing plaintiff's actions and Bankruptcy Appeal (ER 186).

On March 21, 1997, district judge Real issued an order barring plaintiff filing further action (ER 187).

On April 18, 1997, a "Notice of Appeal" appealing the "ORDERS" was filed (EX 13).

B. Statement of Facts

1. The instant case is not related to any case as district judge Real asserted (ER 111 - 114) and was shopped by district judge Real.

2. District judge Real is a Mexican-American. Debtors in case no. CV 97-0906 -R (EX. 20) are also Mexican-Americans, who owed over $9.500.00 back rents and repairs damages to plaintiff.

3. District judge Real had also ignored the law and rules when he let a convicted Mexican-American girl, Martha Dahdah, go free after she was convicted for Bankruptcy Fraud.

4. District Judge Takasugi and magistrate judge Robbins had slept on the instant case since February 12, 1996 after defendants McMahon and Reichmann filed their motions.

5. District judge Real and magistrate

judge Robbins had shopped for case no. CV 96-8464 from Eastern Division.

6. Defendant McMahon had declared that plaintiff was not a vexatious litigant (ER 62 thru 65).

7. The Order of 1/29/97, case no. CV 96-8464, had violated the First Amendment to the U. S. Constitution and was unlawful.

8. District judge King erred in denying of plaintiff's motions to disqualify district judge Real when facts and evidence submitted had shown that district judge Real had repeatedly abused his judicial position as shown in ER 111 thru 114, EXS. 8 thru 11, and EXS. 14 thru 20.

9. The "Memorandum Judgments" of the Appellate Department of the Los Angeles Superior Court, BR 36625 (CT 56693) and BV 21431 (96U00060), can show that district judge Real and district judge King did not know what they were talking about and that

Martin L. Goetsch and S. Clark Moore had obstructed the justice and had violated plaintiff's Civil Rights when Martin L. Goetsch and S. Clark Moore acted as Judicial Tyrants (Vol 2 ER 17 thru 25; Vol 2 ER 135).

10. Martin L. Goetsch and S. Clark Moore have failed to refund plaintiff's money after the Appellate Department of the Los Angeles Superior Court directed them to dismiss case no. CT 56693 since April 9, 1997 (Vol 2 ER 17 thru 20).

11. District judge King once said his parents did not like China Oppressive Regime and left China. The ignorances of facts by district judge King as evidenced by Exhibits 6, 8, and 9 thru 20 and Martin L. Goetsch and S. Clark Moore's disrespects of the law and judicial system depict district judge King had abused his discretions when he denied plaintiff's

motions to disqualify district judge Real and for reconsideration.

12. Volume 2 ER 17 thru 25 can show Martin L. Goetsch and S. Clark Moore had no respect to the Law and the Judicial System.

13. Defendants, case no. CV 97-0906, had falsely and fraudulently stated they owed debts as listed on "Schedule F" while they could not produce any documents to prove those debts (EX 20).

14. Defendants in no. 13 had not produced all related documents to support their claims of debts.

15. Plaintiff's Bankruptcy Appeal was referred to "Eastern Division" (Vol 2 ER 144). District judge Real shopped the case.

16. Debtors/defendants in no. 13 are Mexican-Americans. So is the district judge Real.

17. District judge Real gave no authority or reason supporting his dismissal of plaintiff's Bankruptcy Appeal.

V.

ARGUMENTS

1. DISTRCT JUDGE REAL HAD ABUSED HIS DISCRETION IN CASE NOS. CV 96-8464 (8467) AND IN THE INSTANT CASE ON JANUARY 29, 1997

In Moy v. U. S. (9th Cir. 1990) 906 F.2d 467, 470, the Court held that:

> "an injunction cannot issue merely upon a showing of litigiousness. The plaintiff's claims must not only be numerous, but also be patently without merit."

In O'Loughlin v. Doe (9th Cir. 1990) 920 F.2d 614, 617, the court stated:

> "This Circuit recently announced guidelines to maintain this delicate balance between broad court access and prevention of court abuse:
>
> (1) a plaintiff must be given adequate notice to oppose a restrictive pre-filing order before it entered; (2) a trial court must present an adequate

> record for review by listing the case filings that support its order; (3) the trial court must further make substantive findings as to the frivolousness or harrassing nature of the plaintiff's filings; and (4) the order must be narrowly tailored to remedy only the plaintiff's particular abuses (DeLong v. Hennessey, 912 F.2d 1114, 1147-49 (9th Cir. 1990))".

In the instant case, as depicted by EXS. 10, 12, and 14 thru 20, district judge Real had not only abused his power, district judge Real had also **manifested**, together with U. S. v. Flynt, 756 F.2d 1352 (9th Cir. 1985) and In re Matter of Stephen Yagman (9th Cir. 1986), 796 F.2d 1165, **his persistent disregard of Federal Rules and Laws.**

In re Demos 500 U.S. 16, 18, SUPREME COURT JUSTICES Marshall, Blackman, and Stevens, in their dissenting opinion, stated that:

> "The Court is sorely mistaken if it believes that the solution to the

problem of a crowded docket is to crack down on a litigant like Demos."

"The Court moves ever closer to the day when it leaves an indigent litigant with a meritorious claim out in the cold."

In DeLong v. Hennessey (9th Cir. 1990) 912 F.2d 1144, 1147, the court noted that:

"Pre-filing orders should rarely be filed. See e.g., Oliver, 682 F.2d at 455 (an order imposing an injunction 'is an extreme remedy, and should be used only in exigent circumstances'); Pavilonis v. King 626 F.2d 1075, 1079 (1st Cir.) ('The use of such measures against a pro se plaintiff should be approached with particular caution.') cert. denied, 448 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34 (1980); In re Powell 851 F.2d 427, 431 (D.C. Cir. 1988) (per Curirm) (Such order should 'remain very much the exception to the general rule of free access to the courts.') (Quoting Pavilonis, Supra).

"The order has no boundaries. Compare Moy, 906 F.2d at 470. If we are to permit pre-filing restrictive orders, these orders must be narrowly tailored . . . . Narrowly tailored orders are need -ed'to prevent infringement on the

litigator's right of access to the courts. ' "

In the instant case, district judge Real's order is overly broad and should be vacated.

2. DISTRICT JUDGE REAL'S ORDERS WERE UNLAWFUL AND UNCONSTITUTIONAL

The First Amendment to the U. S. Constitution provides that Congress shall make no law abridging the right of people to petition the government **for a redress of grievances**. Thus, district judge Real's 1/29/97 Order could be perceived to be tantamount to Censorship and/or Dictatorship.

Per Fourteenth Amendment to the U. S. Constitution, a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.

The application of the Due Process clauses of the United States Constitution

must be determined in the context of the individual s Due Process liberty interest in freedom from arbitray adjudicative procedures (In re Thomas (1984) 161 Cal.App.3d 721, 206 CR 719).

Also, "Due Process of Law" requires that a party shall be properly brought into court and that he/she shall have an opportunity, when there, to prove any fact which, according to the condition and the usage of common law, would be a "Protection" to him or her property." (Emphasis added) Goldie v. Goldie, 79 N.Y.S. 268, 269; Larson v. Docky, 58 N.W. 167, 171; Kalloch v. Superior Court of City and County of San Francisco 56 Cal. 229, 239. Therefore, the 1/29/97 Order, case no. CV 96-8464, was unlawful and unconstitutional.

3. DISTRICT JUDGE REAL'S ORDER MANIFESTS HIS PERSISTENT DISREGARD OF FEDERAL LAWS AND RULES

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reflects his disregard of federal laws and rules as depicted by the following cases:

In Brown v. Daden (9th Cir. 1987) 815 F.2d 575, the court issued a "Writ of Mandamus" to comple District Judge Real compliance with Court of Appeal's decision that District Judge Real be replaced by judge randomly selected, because district judge Real's bias, overreaching, and massive sanction imposed against attorney in that action.

In re Matter of Stephen Yagman, SUPRA, this Court, in reversing district judge Real's sanctions against Stephen Yagman, held that district judge Real had abused his discretion and a new judge should be randomly reassigned.

In U. S. v. Flynt, SUPRA, this Court reversed Larry Flynt's convictions and vacated his sentences after this Court found out that district judge Real had

abused his discretion after district judge Real denied Flynt's motion for continuance and when he resorted to summary contempt proceedings.

4. DISTRICT JUDGE REAL HAD NO POWER TO ORDER THE CLERK OF THE BANKRUPTCY COURT NOT TO ACCEPT PLAINTIFF'S FILING OF AN ACTION OBJECTING THE DISCHARGE OF DEBTOR'S DEBTS

In Benjamin Weintraub and Alan N. Resnick's "Bankruptcy Law Manual", Third Edition, Warren, Gorham & Lamont, page 3-24, paragraph (3) - The time to make an objection - the Manual states:

> "To object to the discharge of a debt, a Creditor must file a written complaint with the Bankruptcy Court. The Complaint must be filed within 60 days of the first date set by the court for the meeting of Creditors."

As ER 72-23, 72-24, and EX 20 demonstrate, district judge Real's 1/29/97 Order was not only unconstitutional, it was also vague, ambigious, and overly broad.

In Petition of General Motors Corp.

(1962) 182 N.E.2d 815, the definition of "Meritorious" case is one that is worthy of presentation to court, not one which is sure of success. M. G.L.A.c. 214 Section 28.

The General Motors court further stated that any genuine questions of law were involved in the proccedings below giving rise to a meritorious cause for appeal.

Plaintiff, as Creditors, has every right to object to debtors' fraudulent, dishonest, and false Chapter 7 Bankrupt -cy Petitions to wipe out Plaintiff's judgments against debtors as proved by ER 72-23, 72-24, EX. 18, and EX. 20.

Moreover, 11 U.S.C. Section 707 and Bankruptcy Rule 1017 (b) provide that the only perosns who have standing to object to the debtor's discharge are the Trustee, the Creditors, and the U. S. Trustee.

Thus, district judge Real had no rights to tell the Bankruptcy Court's Clerk not to accept plaintiff's filing of any action.

5. DISTRICT JUDGE REAL S "WARRANT OF ARREST" WAS UNLAWFUL AND UNCONSTITUTIONAL

District judge Real s "Warrant of Arrest" had violated well established Due Process of laws.

Per Fifth and Fourteenth Amendments to the U. S. Constitution, a person may not be deprived of life, liberty, or property without due process of law.

The application of the Due Process clauses of the United States Constitution must be determined in the context of the individual's Due Process liberty interest in freedom from arbitray adjudicative procedures (In re Thomas (1984) 161 Cal.App.3d 721, 206 CR 719).

We all know "Due Process of Law" requires that a party shall be properly

brought into court and that he/she shall have an opportunity, when there, to prove any fact which, according to the condition and the usage of common law, would be a "Protection" to him or her property." (Emphasis added) Goldie v. Goldie, 79 N.Y.S. 268, 269; Larson v. Docky, 58 N.W. 167, 171; Kalloch v. Superior Court of City and County of San Francisco 56 Cal. 229, 239.

Further, Local Rule 7.11 and 27.1 and F.R.C.P. 78, which state that oral argument in Civil Law and Motion cases for the most part is not helpful to the court and is wasteful of the time of the court and of counsel. A well-researched and thoughtful brief is generally of more value to the court.

In this Court, many cases had been decided without any oral argument. Thus, district judge Real's aforesaid "Warrant"

not only had ignored the District Court's GUIDELINES. It had also shown he acted unethically and unprofessionally. The district court's GUIDELINES are - we will not employ abusive, demeaning, or humiliating language in opinions or in written or oral communications with attorneys, parties, or witnesses; Above all, we will remember that the court is the servant of the people, and we will approach our duties in this fashion. Here, he had acted unethically and unprofessionally - he knows plaintiff is a disabled person, he has defendants' motion and plaintiff's opposition, he had "Plaintiff's Response to his Order to Show Cause", and he could rule on the isssues without any hearing - even when hearings were being scheduled - and knew any oral argument has no help to him at all.

As EXS. 7, 10, and 12 depict, district

judge Real had violated Plaintiff's Federal Rights as asserted above.

District judge Real's "Warrant of Arrest" reflects his consistent disregard of federal laws and rules as stated in Argument no. 3 earlier.

6. DISTRICT JUDGE REAL SHOULD NOT IGNORE THE MOTION TO DISQUALIFY HIM

In Schwarzer, Tashima & Wagstaffe, CAL.PRAC.GUIDE: FED. CIV.PRO.BEFORE TRIAL (The Rutter Group, 1996), the GUIDE states

> (6:181.1) - The challenged judge does not determine the legal sufficiency of the affidavit and cannot proceed further in the case until the motion is determined
>
> (6:206.1) - The challenged judge may not proceed further until the motion is determined.

As EX. 10 demonstrates, district judge Real should not ignore the law that all proceedings stayed while Plaintiff's motion to disqualify him was pending (ER 172

In the instant case, as depicted by Exhibits attached herein, district judge Real not only had abused his power, he had also manifested, together with U. S. v. Flynt, 756 F.2d 1352 (9th Cir. 1985) and In re Matter of Stephen Yagman (9th Cir. 1986), 796 F.2d 1165, **the persistent disregard of Federal Rules and Laws** when he ignored the motion to disqualify him.

7. DISTRICT JUDGE GOERGE H. KING HAD ABUSED HIS DISCRETION IN DENYING PLAINTIFF'S MOTION TO DISQUALIFY DISTRICT JUDGE REAL AND MOTION FOR RECONSIDERATION

In U. S. v. Flynt (9th Cir. 1985) 756 F2d 1352, 1358, the court held that:

> "No matter how opprobrious the offense, every person is entitled to have his guilty or innocence determined in a manner that complies with our rules, laws and Constitution."

As EXS. 2, 3, 6 thru 12, and 14 thru 20 depict, district judge Real's "Warrant" was and could be tantamount to censorship

and dictatorship because plaintiff was not affording the most important procedural rights and there is no reason for district judge Real to issue the "Warrant", because

1) This case is a Civil case;
2) There is no evidence or fact showin that Plaintiff has violated any law rule, or anything; and
3) District judge Real could dismiss the case if he deems Plaintiff has not presented enough legal theory in responding to his "Order to Show Cause" (EX. 9).

Further, as demonstrated by EXS. 2, 3, 6, 8 thru 10, and 14 thru 20, district judge King erred in denying Plaintiff's "Motion to Disqualify" district judge Real in a very short period of time without a hearing and in denying plaintiff's Motion for Reconsideration without a hearing.

As facts stated in the "Declaration of

Esther Chow" (ER 175-1) shown, district judge Real had again violated the "Due Process of Law" in issuing the "Warrant" and his courtroom clerk had never served any court papers re the "Warrant" on Plaintiff.

In Schwarzer, Tashima & Wagstaffe CAL.PRAC.GUIDE: FED.CIV.PRO.BEFORE TRIAL (GUIDE, The Rutter Group 1996), Page 16-54, the GUIDE states:

(16:139) "The single essential requirement is questions of law or fact common to the case that are to be consolidated."

(16:139.1) "It is not enough that the suits involve a common defendant if the factual and legal issues are otherwise unrelated (Enterprise Bank v. Saettele (8th Cir. 1994) 21 F3d 233, 236)."

(16:139.2) "Failure to make precise findings as to what are the common questions of law or fact renders consolidation an abuse of discretion (In re Repetitive Stress Injury Litig. (2nd Cir 1993) 11 F3d 368,373)".

(16:144) "A related case is one based on similar claims or involving the same transaction or event."

In the "Order to Show Cause" (EX. 8), district judge Real did not state on what factual and legal issues those cases are related (EXS. 14 thru 20).

Moreover, those listed cases are not based on similar claims or involving the same transaction or event as district judge Real asserted (EX. 6).

In the instant case, as depicted by Exhibits attached herein and statements in "ARGUMENT 4", district judge Real and district judge King had not only abused their power, they had also **manifested**, together with U. S. v. Flynt, 756 F.2d 1352 (9th Cir. 1985) and In re Matter of Stephen Yagman (9th Cir. 1986), 796 F.2d 1165, **their persistent disregards of Federal Rules and Laws.**

Since district judge Real's "Warrant" had violated well established "Due Process of Law" and shown his closed mind on key issues (ER 111 - 114; EX 10), district judge King's denials of "Motion to Disqualify district judge Real" and "Motion for Reconsideration" were abuses of discretion.

8. PLAINTIFF HAD THE RIGHT TO SUE MARTIN L. GOETSCH AND S. CLARK MOORE, ET AL.

Title 42 U.S.C. Section 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In Owen v. City of Independence, Mo., et al. 445 U.S. 621, 100 S.Ct. 2979,

the U. S. Supreme Court held that:

> "Civil Rights Act, by its terms, creates a species of tort liability that on its face admits of no immunities; its language is absolute and unqualified, and no mention is made of any privileges, immunities, or defenses that may be asserted; rather, it imposes liability upon 'every person,' who, under color of state law or custom, 'subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.' U.S.C.A.Const. Amend. 14.
>
> "The purpose of the Act (is) to provide protection to those persons wronged by the abuse of government authority and to deter future constitutional violations . . . ."

The U. S. Supreme Court further held that:

> "Section 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as deterrant against future constitutional deprivations, as well."

In Pierson v. Ray 87 S.Ct. 1213 (1967), Mr. Justice DOUGLAS of U. S. Supreme Court, in his dissenting opinion, had stated, or quoted, that:

"Congress intended to provide a remedy for the wrongs being perpetrated."

"The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."

"There had been a complete breakdown in the administration of justice in certain States and laws nondiscriminatory on their face were being applied in a discriminatory manner." at p. 1221

"The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied . . . . Some State Courts have been instruments of suppression of civil rights. . . ; but the wrong to be remedied still exists." at p. 1222

"I cannot believe that judges * * * would failed to discharge their duty faithfully and fearlessly according to their oaths and consciences * * *. " at p 1223

In Monroe v. Pape 81 S.Ct. 473, 476 (1961), the U. S. Supreme Court held that:

"The question with which we now deal is the narrower one of whether Congress, in enacting Section 1979, meant to give a remedy to parties

> deprived of constitutional rights, privileges and immunities by an official's abuse of his position (Citations omitted). We conclude that it did so intend."

As EXS 14, 17, and 19 depict, Martin L. Goetsch and S. Clark Moore had violated 42 U.S.C. Section 1983 after they repeatedly failed to process plaintiff's appeal in case nos. VP 94555 and CT 56693.

In case no. 93C04927, Martin L. Goetsch should not knowingly, fraudulently, and wantonly stated that plaintiff:

1) was the property manager,

2) the landlord plaintiff always has him, as the property manager, clean the house and carpets, paint the house;

3) was entitled to one hour at $10.00.

Since the Civil Rights Act authorizes any person, who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to

bring an action against the wrong-doer in the Federal Courts. plaintiffs had the right to sue Martin L. Goetsch and S. Clark Moore for their knowingly, fraudulently, and wantonly false statements and for their disrespect of the judicial system.

9. MARTIN L. GOETSCH AND S. CLARK MOORE'S ACTS IN NO. 8 WERE NOT JUDICIAL ACTS WHEN THEY REPEATEDLY FAILED TO DISCHARGE THEIR DUTIES FAITHFULLY, ETHICALLY, AND PROFESSIONALLY

In Crooks v. Maynard 913 F.2d 699 (9th Cir. 1990), the court held that:

> "Mere fact that defendant is a judge does not mean that defendant has absolute immunity: absolute immunity only applies to judicial acts and not administrative, legislative, and executive functions that judges may perform."

If the law allows a party to appeal a judgment, then, Reginald Yates, Martin L.

Goetsch, and Jennifer Wenger, who were empowered to faithfully enforce the law, had betrayed their oaths of offices by failing to process plaintiff's appeal in case no. VP 94555 since 1993.

In case no. VP 94555, Martin L. Goetsch and Jennifer Wenger had violated Rule 187 of California Rules of Court aft they repeatedly ignored to process plaintiff's appeal since 1993.

In case no. 96U00060, Martin L. Goetsch had no right to amend judgment awarded by Commissioner Marc D. Lauper and had violated Due Process of Law when Martin L. Goetsch changed the judgment. Especially, Martin L. Goetsch had no right to change judgment after a "Notice of Appeal" had filed (Vol 2 ER 21 - 25).

Since Martin L. Goetsch and Jennifer Wenger had ignored their duties and betrayed their oaths of offices, their acts

as above-stated were not judicial acts.

10. DEFENDANTS' ACTS AND CONDUCT HAD VIOLATED THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

In Maureen Harrison and Steve Gilbert's "The Americans with Disabilities Act Handbook", Excellent Books, 1992, they had printed President George Bush's statement upon signing the Americans With Disabilities Act of 1990:

> " . . . . The Americans with Disabilities Act (ADA) is such legislation. It promises to open up all aspects of American life to individuals with disabilities - employment opportunities, government services, public accomodations, transportation, and telecommunications." (page i)

Since the Pomona Municipal Court and the District Court are one of the Branch Government offering government services and are open to public, district judge Real and defendants had willfully, unlawfully, maliciously, unethically, and un-

professionally discriminated against plaintiff as a disabled person.

The facts and evidence as stated in this BRIEF and contained in the RECORDS (EX. 14) clearly show that district judge Real and defendants have repeatedly and knowingly violated the ADA.

11. District Judge Real Had Abused His Discretion in Dismissing of Plaintiff's Bankruptcy Appeal

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Defendants/Debtors in case no. CV 97-0906 filed their Chapter 7 Bankruptcy Petition in the U. S. Bankruptcy Court, San Bernardino Office, case no. SB 95-25818-MG (EX. 20).

Plaintiff, as a Creditor, filed the "Complaint to Determine Exception to Discharge . . ." in the San Bernardino Office, case no. SB 96-1022-MG.

On February 3, 1997, the U. S. Bank-

ruptcy Court, San Bernardino Clerk's Office sent a "Notice of Referral of Appeal" to plaintiff. Plaintiff's appeal was referred to "Eastern Division" of the District Court. Later, district judge Real shopped plaintiff's Bankruptcy Appeal.

On March 25, 1997, after plaintiff filed the "Appellant's Opening Brief" and "Records" on March 19, 1997, plaintiff received district judge Real's "Order of Dismissal". District judge Real did not give any authority or reason for what he did (EX 12).

Defendants in case no. CV 97-0906 owed rents over $9,500 to plaintiff. As their documents contained in the "Excerpts of Record" and statements contained in the "Reporter's Transcript" demonstrate, debtors not only had committed Bankruptcy Frauds, they had also made false oaths and accounts.

District judge Real, a Mexican-American, should not spoil debtors, also Mexican-Americans, by dismissing plaintiff's Bankruptcy Appeal.

District judge Real not only had abused his judicial position in case no. CV 97-0906, he had also abused his judicial position eralier when he set free a young Mexican-American girl, Martha Dahdah after she had been convicted as a felong of Bankruptcy Fraud.

12. District Judge Real Had Violated Due Process of Law in Dismissing of Plaintiff's Bankruptcy Appeal

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"Due Process of Law" requires that a party shall be properly brought into court, and that he shall have an opportunity, when there, to prove any fact which, according to the condition and the usages of common law, would be a "protection" to him or his property." (Emphasis Added) Goldie

v. Goldie 79 N.Y.S. 268, 269; Larson v. Dicky 58 N.W. 167, 171; Kalloch v. Sup. Court of City and County of San Francisco, 56 Cal 229, 239.

In case no. CV 97-0906, as demonstrated by EX. 20, debtors owed rents over $9,500.00 to plaintiff. As Exhibits in case no. CV 97-0906 depict, debtors could not produce all documents supporting their accounts and oaths that their debts as listed in their Petition are true and correct.

Exhibits 6 and 20 can show district judge Real had abused his judicial position when he 1) joined unrelated cases on January 30, 1997, 2) ignored the law as the Court of Appeals reversed his rulings in In re Matter of Stephen Yagman and U. S. v. Flynt, and 3) violated the "Due Process of Law" in dismissing of plaintiff's Bankruptcy Appeal.

VI.

CONCLUSION

Mr. Justice Brenner of the United States Supreme Court had stated in Adicke v. Kress & Co., 398 U. S. 144, 190, 90 S. Ct. 1598, 1620, 26 L.Ed.2d 142 (1970):

> "How 'Uniquely amiss' it would be, therefore, if the government itself 'the social organ to which all in our society look for promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' were permitted to disavow liability for the injury it has begotten."

Defendants in cases referred have betrayed their oaths.

District judge Real's "Warrant" and Ignorance of the "Motion to Disqualify" him and district judge King's denials of "Motion to Disqualify" district judge Real and motion for reconsideration are clearly in violation of Due Process of law, abuse of discretions, and erroneous, because district judge Real and district judge

King have violated well established rules and laws and abused their discretions.

Defendants, Martin L. Goetscg, and S. Clark Moore, et al. had forfeited their immunities when they ignored and refused to enforce the laws and when they repeatedly committed frauds on the Courts.

Their acts and conduct were malicious, wanton, oppressive, intentional, and unlawful. Therefore, district judge Real's ORDERS be vacated because plaintiff had stated facts that all of them had violated clearly established laws.

Under "Equal Protection of Law", district judge Real, a Mexican-American, should not ignore the law to cover his Mexican-Americans' debts owed to plaintiff by oppressively and wantonly dismissing plaintiff's Bankruptcy Appeal.

In light of the foregoing facts and evidence, plaintiff requests that this

Court vacate the district judge Real's Orders dismissing of plaintiff's actions and Bankruptcy Appeal and barring plaintiff's further filing of action for the sake of the interest of justice and the integrity of the judicial system.

DATED: August 2, 1997

/S/

Shong-Ching Tong
Appellant Pro Se

VII.

STATEMENT OF RELATED CASES

There is no related case

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHONG-CHING TONG,	)	CASE NO. CV 96-8467-R (BQR)
Plaintiff,	)	
v.	)	ORDER
SANDRA BENDONM, MITCHEL GOLDBERG, KARL T. ANDERSON, et al.,	)	FILED JAN 29, 1997 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA
Defendants.	)	

Plaintiff has filed various matters in this Court and Bankruptcy Court.

Plaintiff is enjoined from filing any further matters either in the United States District Court or Bankruptcy Court for the Central Distruct of California until all matters now pending are finally determined in this Court.

The Clerk is ordered not to receive for filing any new matter from plaintiff until further order of this Court.

DATED: January 29, 1997

Manuel L. Real

United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHONG-CHING TONG, Plaintiff, v. JAMES W. MCMAHON, et al., Defendants. And All Related/Consoli-dated Actions.	CASE NO. CV 95-6673-R ORDER TO SHOW CAUSE FILED JAN 30, 1997 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

The various cases filed in this Court by plaintiff are now joined for pre-trial and trial before this Court under the title:

CV95-6673 R: SHONG-CHING TONG, et al., v. James McMahon, et al

The cases joined are as follows:

CV96-4488 R: SHONG-CHING TONG and Ma v. Martin L. Goetsch, et al

CV96-5832 R: SHONG-CHING TONG v. Robert M. Takasugi, et al

CV96-6450 R: SHONG-CHING TONG v. Robert M. Takasugi, et al

CV96-7809 R: SHONG-CHING TONG v. S. Clark Moore, et al.

CV96-8467 R: SHONG-CHING TONG v. Sandra Bendon

CV96-8755 R: SHONG-CHING TONG v. S. Clark Moore, et al

Plaintiff is ordered to show cause why plaintiff should not be declared a vexatious litigant and further access to this Court be denied in the matters set forth herein.

Hearing is set in Courtroom 8 of the United States Courthouse, 312 North Spring Street, Los Angeles, CA 90012, at 11:00 a. m. on March 3, 1997.

Any reference of the cases involved herein to a Magistrate Judge is now vacated.

DATED: January 30, 1997

Manuel L. Real
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHONG-CHING TONG,	)	CASE NO. CV 95-6673 -RMT (BQR)
Plaintiff,	)	PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTIONS: REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF SHONG-CHING TONG IN OPPOSITION TO MOTIONS
vs.	)	
JAMES W. McMAHON . JOSEPH REICHMANN Individually,	)	
Defendants.	)	
	)	DATE: March 1. 1996 TIME: 2:30 p. m.

COMES NOW. the Plaintiff Shong-Ching Tong and submits the following Memorandum of Points and Authorities and Declaration of Shong-Ching Tong in opposition to defendants'. James W. McMahon ("McMahon") and Joseph Reichmann ("Reichamnn"). motions to dismiss and for order declaring Tong a Vexatious Litigant.

REQUEST FOR JUDICIAL NOTICE

Pursuant to Fed.R.Ev. Section 201. plaintiff hereby requests that the court

take judicial notice on all documents contained in the following cases files and of the following documents filed concurrently herewith:

1. All pleadings, papers, and documents contained in Case No. CV 94-4784-RMT (Mc);

2. All pleadings, papers, and documents contained in Case No. CV 95-2191-KN (AJW); 95-2191-KN (Mc), and 95-2191-RMT (Mc);

3. All pleadings, papers, and documents contained in Case No. CV 95-3895-DT (CT), 95-3895-DT (Mc), and 95-3895-RMT (Mc);

4. All pleadings, papers, and documents contained in Case No. CV 95-4292-JSL (BRQ), 95-4292-JSL (Mc), and 95-4292-RMT (Mc);

5. All pleadings, papers, and documents contained in Case No. CV 95-4438-LGB (AJW), 95-4438-LGB (Mc), and 95-4438-RMT (Mc);

6. All pleadings, papers, and documents contained in Case No. CV 93-4571-JMI (JRx);

7. All pleadings, papers, and documents

contained in Case No. CV 95-7554-RMT (SH).

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On October 5. 1995. plaintiff filed a Complaint for damages against Defendants McMahon and Reichmann for their violations of plaintiff's constitutional rights and the Americans with Disabilities Act of 1990 ("ADA"). inter alia.

On January 19. 1996. defendants filed their motions.

Plaintiff hereby submits his opposition to defendants' motions.

II.

DEFENDANTS' MOTIONS SHOULD BE DENIED BECAUSE THEIR MOTIONS ARE IN VIOLATION OF CD CA RULE 7

Defendants' motions should be denied because the Cover Page of the Notice of

Motions are in violation of Local Rule 7.5 (CD CA Rule 7.5), which provides that the notice of motion should contain DATE, TIME, and PLACE for a hearing. A review of defendants' Notice of Motions, there is NO hearing PLACE indicated as required. Thus, defendants' motions should be denied. Further, defendants' motions had not duly and properly served on plaintiff as evidenced by Declaration of Esther Chow (Exhibit 1).

Since defendants' Notice had not served on plaintiff as required. Therefore, defendants' motions should be denied.

III.

DEFENDANTS' MOTIONS SHOULD BE DENIED BECAUSE THE U. S. ATTORNEY COMMITTED CONFLICT OF INTEREST AND DEFENDANTS WERE NOT ACTING WITHIN JURISDICTIONS

In case no. CV 95-7554-RMT (SH), filed

on November 6, 1995, while Magistrate Judge Stephen Hillman, acted without jurisdiction, filed his "Report and Recommendation" to dismiss plaintiff's case on November 8, 1995 (Exhibit 5 - which states that parties have ten days to consent or not consent to his handling of the case), the U. S. Attorney did not act in any capacity, on behalf of defendant McMahon and the U. S. Government.

Since defendant McMahon did not allege he has been a Federal employee in case no. CV 95-7554-RMT (SH) and the U. S. Attorney did not allege the U. S. Government should be a defendant. Thus, the U. S. Attorney's participation is inappropriate and their motions should be denied.

Moreover, there is no notice or any hearing re the U. S. Attorney's Ex Parte request to join in, which had violated DUE PROCESS OF LAW and was unlawful and

oppressive.

As Exhibits 9, 10, and 12 depict, the U. S. Attorney should prosecute defendants violations of the ADA, the LORENZOs' Bankruptcy Frauds, and Mail Frauds ignored by Paul Turner and Coleman A. Swart. They should not waste tax payers' money to defend defendants' unlawful, fraudulent, unethical, and unprofessional acts and conduct.

Also, the U. S. Government should be dismissed as a party because the evidence and facts show defendants were not acting within the scope of employment (Gilbert v. DaGrossa (1985) 756 F.2d 1455 - - sovereign immunity does not bar damage action against federal officials in their individual capacity for violation of individual's constitutional rights; Crooks v. Maynard (9th Cir. 1990) 913 F.2d 699 - - mere fact that defendant is judge does not mean that

defendant has absolute immunity.)

As Exhibit 10 depicts, the U. S. Attorney had asked Mr. David Carranza to investigate Thelma Lorenzo's various misconduct and unlawful acts due to she has been an IRS employee.

IV.

THE IMMUNITIES SHOULD NOT APPLY TO DEFENDANTS BECAUSE THEIR ACTS AND CONDUCT WERE BEYOND THE PALE OF ANYTHING THAT COULD SENSIBLY BE CALLED A JUDICIAL ACT

In Stump v. Sparkman (435 U. S. 349 (1978)), Mr. Justice Stewart in his dissenting Opinion, had stated "A Judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity."

In Monroe v. Pape 81 S.Ct. 473, 476

(1961), the Supreme Court held that:

> "The question with which we now deal is the narrower one of whether Congress, in enacting Section 1979, meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position (Citations omitted). We conclude that it did so intend."

In the instant case, the issues are:

1) If defendants are immune, then, the issue is whether they should be immune from their non-discretional act

2) If defendants' acts and conduct were non-discretional.

The issue is whether defendants should be protected when they were guilty of unfaithful to their oath of office.

As Exhibits contained herein and documents contained in the cases files depict, defendants had not only repeatedly and willfully abused the judicial process, they had also committed wilfull and unlawful acts in wrongful manners.

Since defendants' abuses of judicial machinery in cases as mentioned clearly show plaintiff's claims against defendants are correct, plaintiff's claims should withstand their motions to dismiss. Therefore, they should be held for plaintiff's damages resulted from their abuses of judicial process, because:

1) defendants' acts were not judicial act and not within their judicial discretion; Also, the attached Exhibits can show that defendants had not only acted like a loose cannon, they had also acted oppressively and unlawfully.

2) plaintiff's complaint is for remedies against the offending parties for vindicting plaintiff's constitutional quarantees, i. e., to petition the Government for redress, to have equal protection under the laws, to have

rights, privileges or immunities secured by the constitution and laws.

Moreover, all the Exhibits presented can show not only that plaintiff's constitutional rights have been infringed, but that rights have been willfully and oppressively infringed by defendants as alleged in the complaint.

In light of the foregoing, Defendants' acts could not sensibly be called judicial acts. Therefore, the judicial immunities did not apply to them.

V.

DEFENDANTS' MOTIONS FOR ORDER TO DECLARE TONG AS A VEXATIOUS LITIGANT SHOULD BE DENIED

Title 42 U.S.C. Section 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the

jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In Owen v. City of Independence, Mo., et al. 445 U.S. 621, 100 S.Ct. 2979, the U. S. Supreme Court held that:

"Civil Rights Act, by its terms, creates a species of tort liability that on its face admits of no immunities; its language is absolute and unqualified, and no mention is made of any privileges, immunities, or defenses that may be asserted; rather, it imposes liability upon 'every person,' who, under color of state law or custom, 'subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or imminities secured by the Constitution and laws." U.S.C.A.Const. Amend. 14.

"The purpose of the Act (is) to provide protection to those persons wronged by the abuse of government authority and to deter future constitutional violations . . . ."

The U. S. Supreme Court further held that:

"Section 1983 was intended not only to

provide compensation to the victims of past abuses, but to serve as deterrant against future constitutional deprivations, as well."

"The Act imposes liability upon every person who, under color of State law or custom, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws"

In Monroe v. Pape 365 U. S. at 184, 81 S.Ct. at 482, the U. S. Supreme Court held that:

"The central aim of the Civil Rights Act was to provide protection to those persons wronged by the misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law (Quoting United States v. Classic, 313 U. S. 299, 326, 61 S.Ct. 1031, 1043, 85 L. Ed. 1368 (1941)). By creating an express federal remedy, Congress sought to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority, whether they act in accordance with their authority or misuse it."

In D. C. Court of Appeals v. Feldman 460 U.S. 462, 490, Mr. Justice STEVENS, in his dissenting opinion, stated that:

"If a challenge to a state court's decision is brought in United States district court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the Federal question jurisdiction of the Federal Court. 28 U.S.C. Section 1331 (1976 ed. Supp. V)".

In Pierson v. Ray 87 S.Ct. 1213, 1220 (1967), Mr. Justice DOUGLAS, in his dissenting opinion, had stated, or quoted, that:

"Congress intended to provide a remedy for the wrongs being perpetrated."

"The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."

"There had been a complete breakdown in the administration of justice in certain States and laws nondiscriminatory on their face were being applied in a discriminatory manner." at p. 1221

"The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied. . . . Some State Courts have been instruments of suppression of civil rights. . . ;

but the wrong to be remedied still exists." at p. 1222

"I cannot believe that judges * * * would failed to discharge their duty faithfully and fearlessly according to their oaths and consciences * * *. " at p 1223

California Constitution, Article VI, Section 3, provides that the court of appeal SHALL conduct itself as a 3-judge court and any determination of the merits that is to bind the parties must have the agreement of two justices (In re Christopher A. (1991) CA3d 1154, 277 CR 302.

In Nicastro v. U. S., 206 F.2d 89 and Words & Phrases, permanent Ed., Vol. 3A, pp 119 - 121, an appeal is defined as A Continuation of original processing and is not a new action.

In McCartney v. Commission on Judicial Qualification (1974) 196 Cal.App.3d 692, the court held that California Code of Civ Procedure (CCP) Sections 170 et seq. quara

tees a litigant "An extraordinary right to disqualify a judge."

In Nissan Motors Corp. in U.S.A. v. Superior Court (1992). 7 CR2d 801. the court held that "judicial efficiency is not to be fostered at the expense of a litigant's rights under CCP Sections 170 et seq. to disqualify a judge."

In Petition of General Motors Corp. (1962) 182 N.E.2d 815. the definition of "Meritorious" case is one that worthy of presentation to court. not one which is sure of success. M.G.L. A.c. 214 Section 28.

In plaintiff's complaints against Paul Turner. Theodore Piatt. et al., plaintiff sought damages caused by those defendants' repeated violations of plaintiff's civil rights and the ADA when they acted without jurisdiction.

As Exhibits contained in this Opposi-

tion show, defendants are not immune, because: 1) their acts and conduct were nonjudicial; 2) they did damages to plaintiff intentionally and repeatedly; and 3) their acts and conduct were unlawful, oppressive, and unethical.

VI.

DEFENDANTS' MOTIONS SHOULD BE DENIED BECAUSE EVIDENCE AND FACTS PRESENTED HEREIN PROVED THEIR MOTIONS ARE FRIVOLOUS AND MALICIOUS

In De Long v. Hennessey (9th Cir. 1990) 912 F.2d 1144, the court held that, in order to enjoin a pro se litigant further filing of any court papers, defendants must present adequate records for review and there must be substantive findings of frivolous or harassing nature of actions.

The De Long court further held that,

in order to issue any pre-filing restrictive orders, the following findings must have in existence:

1) the number and content of the frivolous of the claims;
2) frivolous. Merely because a claim lacks jurisdiction does not make the claim pro se frivolou
3) show a pattern of harassment;
4) the orders must be narrowly tailored to closely fit the specific vice encountered;
5) the number of complaints was inordinate.

In defendants' motions, defendants have failed to present adequate records for review.

If the court would gather the Civil Docket Sheets of the cases mentioned by defendants and requested for judicial notice by plaintiff, the court would know defendants only presented a very minimal records for review. <u>They are inadequate, because defendants had not presented all important records contained in those cases files</u>. For Example:

A. In re Edward L. Billings, LA 92-25687-LHF:

Defendants and the U. S. Attorney knew and should have known that plaintiff, as a Creditor of Debtor, Edward L. Billings, must file a complaint objecting to discharge of the Debtors' Debts after that Edward L. Billings had maliciously sued plaintiff in 1986, that he had stolen money from plaintiff's savings account, and that he had converted plaintiff's restaurant properties to his own use.

Exhibit 11 can show defendants and the U. S. Attorney had willfully, falsely, and unethically misstated, distorted, and misrepresented facts and evidence in the Billings' case.

B - On or about October 16, 1995, defendant McMahon issued an "Order denying motion for Vexatious Litigant Security, case no. CV 95-2191-KN (Exhibit 2)", after

he shopped for the case from Magistrate Judge Andrew J. Wistrich. This fact shows plaintiff's complaints against all the defendants are not frivolous, nor harassment in nature.

C - As "Transfer Orders - Declined" and "Order re Transfers" (Exhibits 6 & 7) show, defendant McMahon has consistently abused the judicial system to harass plaintiff:

i) If those cases are related. Then, WHY defendant McMahon failed to consolidate them to save everyone's time:

ii) Pursuant FRCP 42 and Pages 16-36.6 thru 16-36.9 of the Schwarzer, Tashima & Wagstaffe's California Practice Guide, Federal Civil Procedure before Trial (The Rutter Group 1995), the Magistrate Judge can have those cases should be either Magistrate Judge Carolyn Turchin, or Joseph Reichmann, or Andrew J. Wistrich,

NOT defendant McMahon:

iii) Defendant McMahon should not issue any "Order to show cause" in those cases after defendants' motions to dismiss and plaintiff's Oppositions submitted for rulings by Magistrate Judges Turchin, Wistrich, Eick, etc..

iv) Defendant McMahon had willfully, unlawfully, and oppressively violated the law in case no. CV 94-4784-RMT granting defendants' motion for summary judgment when plaintiff's motion to disqualify him was pending and he knows plaintiff had been discriminated against by defendants as a disabled person;

v) Defendant McMahon had no right to vacate defaults entered against defendants THE LORENZOS and CARLSON in case no. CV 95-2191-KN by himself and without a hearing when Magistrate Judge Wistrich was making rulings on defendants' motions

to dismiss.

As evidence and facts contained herein show, defendants'motion is barred by the Doctrine of Res Judicata and they have acted fraudulently, oppressively, frivolously, and maliciously.

VII.

DEFENDANTS' MOTION SHOULD BE DENIED BECAUSE THE COURT SHOULD NOT ACT AS AND BEHAVE AS IF A DICTATOR/TYRANT

As a Judge/Magistrate Judge, his functions are to follow the RULE, to interpret the LAW, to enforce the LAW, and be faithful to his OATH. HE/SHE should not act as and behave as if the LEGISLATOR TO CREAT ANY LAW HE/SHE LIKES.

As Exhibits contained in this Opposition and in other actions demonstrate, defendants had violated the RULE, the LAW, failed to enforce the LAW, and breached

their OATHs of Office. For example:

1. Case No. CV 94-4784-RMT (Mc) - -

a) defendant McMahon had no authority to grant those defendants' motion for summary judgment while plaintiff's MOTION to disqualify him was pending.

b) he knew defendants had violated the Americans with Disabilities Act. Yet, he did not deny defendants' motion.

c) he had no authority to hear defendants' motion for summary judgment. He is not an Article III Judge.

d) he failed to follow the RULE to hold the Status Conference and to set up SCHEDULES for cut-off date re Discovery and Motions, and for the Pre-Trial and Trial.

2. Case No. CV 95-2191-KN (AWT):

a) defendant McMahon knew defendants THE LORENZOS and the Lawyer Carlson had committed Bankruptcy Frauds in 1993, 1994

and 1995 when THE LORENZOS repeatedly filed 5 Chapter 7 Bankruptcy Petitions in order to obstruct the Los Angeles Sheriff to evict them after they constantly cheated owners/lessors of their rents and they had no rights to file any action outside of the U. S. Bankruptcy Court. Yet. he unlawfully and willfully vacated defaults entered against THE LORENZOS and Carlson without hearing.

b) He Knew defendant Theodore Piatt was in violation of DUE PROCESS of Law when defendant Piatt knowingly and unlawfully granted defendant Lawyer Carlosn's Ex Parte Application without any notice to plaintiff after plaintiff complained to California Commission on Judicial Performance about defendant Piatt, his brother, and their gang of four of the Pomona Superior Court's judges' unlawful, unethical and unprofessional acts and

conduct.

3. Case No. CV 94-8263-HLH (JR) - -

Defendant Reichmann should know defendants acted without authority and without jurisdiction as evidenced by Exhibits 3. 5, and 8. Yet, he acted, without jurisdiction, to dismiss plaintiff's complaint willfully and oppressively.

4. Case No. CV 93-4571-JMI (JRx) - -

Defendant Reichmann repeatedly ignored and refused to impose monetary sanctions against attorneys for FDIC when they were in violations of Discovery to meet plaintiff's requests. Yet, he wasted too much court times to instruct FDIC's attorneys to file motion for attorney's fees when he knew FDIC was not entitled to as evience by Exhibit 4.

VIII.

CONCLUSION

Mr. Justice Brennan of the United

States Supreme Court had stated in Adickes v. Kress & Co., 398 U. S. 144, 190, 90 S. Ct. 1598, 1620, 26 L.Ed.2d 142 (1970):

> "How 'Uniquely amiss' it would be, therefore, if the government itself - the social organ to which all in our society look for promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' - were permitted to disavow liability for the injury it has begotten."

Plaintiff's complaint is seeking compensation against defendants individually as the Constitution and the ADA provide.

Defendants had also betrayed their oaths.

Defendants' acts and conduct in the cases as mentioned were unlawful, intentional, unethical, and non-judicial.

These examples proved what defendants were inconsistent with actual justice and not warranted by any principle of law.

Since the Constitution and the ADA authorize any person, who has been de-

prived of any right, privilege, or immunity secured to him by the Constitution of the United States and the ADA, to bring an action against the wrong-doer in the Federal Courts, plaintiff's complaint has stated a Federal Cause of Action in the instant case.

In the best interest of the justice and the integrity of the judicial system, the Court should deny defendants' motions, because UNDER THE LAW, ALL PEOPLE ARE EQUAL, NO ONE SHOULD BE ABOVE THE LAW.

DATED: February 12, 1996

_____
Shong-Ching Tong,
Plaintiff Pro se

DECLARATION OF SHONG-CHING TONG

I, SHONG-CHING TONG, declare:

1. Declarant is the plaintiff in the instant case and is familiar with the facts in this case and, if called upon to testi-

fy, could and would testify competently and from personal knowledge as to matters stated within this declaration.

2. In order to prove to the court allegations in the complaint are true, declarant attached Exhibits 1 thru 12 as the evidence in the instant case (see Request for Judicial Notice).

I declare under penalty of perjury of laws of the United States of America that the foregoing is true and correct, and that this declaration is executed on this 12th day of February, 1996 at Pomona, California.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHONG-CHING TONG, Plaintiff, v. JAMES W. MCMAHON, JOSEPH REICHAMNN, Individually, Defendants.	CASE NO. CV 95-6673-R (BQR) NOTICE OF MOTION AND MOTION TO DISQUALIFY DISTRICT JUDGE MANUEL L. REAL: REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF SHONG-CHING TONG IN SUPPORT THEREOF

DATE: March 31, 1997
TIME: 10:00 a. m.
CTRM: "8"

(28 U.S.C. Sections 144 and 455(a)(b))

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that plaintiff Shong-Ching Tong's motion to disqualify the district judge Manuel L. Real filed herewith has been set for hearing on March 31, 1997, at 10:00 a. m., or as soon there-

after as matters may be heard, in Courtroom "8" of this court, located at 312 N. Spring St., Los Angeles, CA 90012.

Plaintiff submits the following Points and Authorities and Declaration of Shong-Ching Tong in support of plaintiff's motion to disqualify the district judge Manuel L. Real on grounds that the district judge Manuel L. Real is prejudiced and biased against plaintiff, that he has ignored the laws and abused the judicial process, that he should not pass judgment on his judicial colleagues, and that plaintiff believes that plaintiff cannot have and will not be able to have fair and impartial hearings and trial before district judge Manuel L. Real.

DATED: February 27, 1997

/S/

Shong-Ching Tong,
Plaintiff Pro se

REQUEST FOR JUDICIAL NOTICE

Pursuant to Fed.R.Ev. Section 201, plaintiff hereby requests that the Court take judicial notice of the following documents and facts asserted therein in support of plaintiff's motion to disqualify district judge Manuel L. Real:

1. All pleadings, papers, and documents contained in Case No. CV 95-6673-IH (BQR), 95-6673-RMT (BQR).

2. All pleadings, papers, and documents contained in Case No. CV 96-5832-RMT (JG), CV 96-5832-MRP (BQR).

3. All pleadings, papers, and documents contained in Case No. CV 96-6450-KMW (AJW), CV 96-6450-R (BQR).

4. All pleadings, papers, and documents contained in Case No. CV 96-4488-RMT (BQR), CV 96-4488-RAP(BQR), CV 96-6450-R (BQR).

5. All pleadings, papers, and documents contained in Case No. CV 96-7809-WJR, CV

96-7809-R.

6. All pleadings, papers, and documents contained in Case No. CV 96-8755-WMB, CV 96-8705-R.

7. All pleadings, papers, and documents contained in Case No. CV 96-8467 (4)-R.

GENERAL AUTHORITY FOR MOTION TO RECUSE

28 U.S.C. Section 455 (a)(b) provides in pertinent part as follows:

> "(a) Any Justice, Judge, or Magistrate of the United States shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned."
>
> "(b) He or she shall also disqualify himself or herself in the following circumstances:
>
> '(1) Where he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the facts.'"

In United States v. State of Alabama (11th Cir. 1987), 827 F2d 1532, 1546, the court held that:

"Such personal knowledge vitiates the

carefully constructed rules of procedures and evidence that ensure deliberate, unbiased fact finding."

In re Faukner (5th Cir. 1988), 856 F2d 716, 721, the court held that:

"Where such knowledge exists, disqualification is mandatory and no showing of factual bias is required."

In Schwarzer, Tashima & Wagstaffe CAL. PRAC.GUIDE: FED.CIV.PRO.BEFORE TRIAL (GUIDE, The Rutter Group 1996), Page 16-71, the GUIDE states bias or prejudice connotes "a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate."

In Roberts v. Bailer (6th Cir. 1980) 625 F2d 125, 127, and in Harris v. Champion (10th Cir. 1994) 15 F3d 1538, 1571 - 1572, the courts held that:

"If a judge's comment indicating a closed mind on key issue in the case and would cause a reasonable person to question the judge's impartiality, may compel recusal."

In Schwarzer, Tashima & Wagstaffe CAL.PRAC.GUIDE: FED.CIV.PRO.BEFORE TRIAL (GUIDE, The Rutter Group 1996), Paragraph

16:188, the GUIDE states:

> "Preconceived view may rise to the level of personal bias if it is established that the judge's mind is irrevocably closed on the issue as it arise in the context of a particular case . . . so that the judge is incapable of judging a particular controversy fairly on the basis of its own circumstances (Southern Pacific Communications v. AT & T (DC Cir. 1984) 740 F2d 980, 991)."

In Milgard Tempering, Inc. v. Selas Corp. of Am. 902 F.2d 703, 714 (9th Cir. 1990) (quoting Herrington v. Sonoma City, 834 F.2d 1488, 1503 (9th Cir. 1987)), the court held that:

> "The test for recusal in this Circuit is 'whether a reasonable person with knowledge of all the facts would conclude that the judge's impartialit might reasonably be questioned.'"

In Re Bernard (9th Cir. 1994), 31 F3d 842, 843, the court held that:

> "Judicial Officials are under an ethical duty to satisfy themselves that they are actually unbiased toward parties in each case and that their impartiality cannot be reasonably questioned.

In re Beard (4th Cir. 1987) 811 F2d 818. in Preston v. United States (9th Cir. 1991) 923 F2d 731. and in Liljeberg v. Health Services Acquisition Corp. (1988) 466 US 847, the courts held that:

> "Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality: The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality not whether the judge is in fact impartial."

In Liteky v. United States (1994) 114 S.Ct. 1147, 1153, the Court held that the judge's personal "bias or prejudice" is ground for disqualification both under 28 U.S.C. Section 144 and Section 455 (b)(1).

In U. S. v. Greer, et al. (CD CA 1996), the entire San Diego Federal Bench removed itself from passing judgment on its judicial colleague and was transferred to other District Court.

In the instant case, the district

judge assigned to this case was Robert M. Takasugi and the magistrate judge assigned to this case was Brian Q. Robbins. The case has been under submission re defendant's motion to dismiss filed earlier. Later, district judge Robert M. Takasugi disqualified himself from the case and district judge Manuel L. Real shopped for this case.

As stated below and in the Declaration of Shong-Ching Tong, district judge Real has shown his bias and prejudice when he, on January 29, 1997, case no. CV 96-8464 (7) - R (BQR), was in violation of Due Process of Law, issued an unconstitutional and unlawful Order instructing the District Court and Bankruptcy Court's Clerks not to accept any new filing by plaintiff:

In Moy v. U. S. (9th Cir. 1990) 906 F.2d 467, 470, the Court held that an injunction cannot issue merely upon a showing

of litigiousness. The plaintiff's claims must not only be numerous, but also be patently without merit.

In O'Loughlin v. Doe (9th Cir. 1990) 920 F.2d 614, 617, the court stated:

> "This Circuit recently announced guidelines to maintain this delicate balance between broad court access and prevention of court abuse:
>
> (1) a plaintiff must be given adequate notice to oppose a restrictive prefiling order before it entered;
> (2) a trial court must present an adequate record for review by listing the case filings that support its order;
> (3) the trial court must further make substantive findings as to the frivolousness or harrassing nature of the plaintiff's filings; and
> (4) the order must be narrowly tailored to remedy only the plaintiff's particular abuses (DeLong v. Hennessey, 912 F.2d 1114, 1147-49 (9th Cir. 1990))".

In case no. 96-8764 (7), district judge Real not only has abused his power, district judge Real had also **manifested**, together with U. S. v. Flynt, 756 F.2d 1352 (9th Cir. 1985) and In re Matter of

Stephen Yagman (9th Cir. 1986), 796 F.2d 1165, **the persistent disregard of Federal Rules and Laws.**

In re Demos 500 U.S. 16, 18, JUSTICES Marshall, Blackman, and Stevens, in their dissenting opinion, stated that:

> "The Court is sorely mistaken if it believes that the solution to the problem of a crowded docket is to crack down on a litigant like Demos."
>
> "The Court moves ever closer to the day when it leaves an indigent litigant with a meritorious claim out in the cold."

In DeLong v. Hennessey (9th Cir. 1990) 912 F.2d 1144, 1147, the court noted that:

> "Pre-filing orders should rarely be filed. See e.g., Oliver, 682 F.2d at 455 (an order imposing an injunction 'is an extreme remedy, and should be used only in exigent circumstances'); Pavilonis v. King 626 F.2d 1075, 1079 (1st Cir.) ('The use of such measures against a pro se plaintiff should be approached with particular caution.') cert. denied, 448 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34 (1980); In re Powell 851 F.2d 427, 431 (D.C. Cir. 1988) (per Curirm) (Such order should 'remain very much the exception to the general rule of

free access to the courts.')
(Quoting Pavilonis, Supra).

> "The order has no boundaries. Compare Moy, 906 F.2d at 470. If we are to permit pre-filing restrictive orders, these orders must be narrowly tailored . . . . Narrowly tailored orders are needed 'to prevent infringement on the litigator's right of access to the courts.'"

In the instant case, the district judge Real's orders are overly broad and show he has abused his discretion when he issued the "Orders".

Again, The First Amendment of the U. S. Constitution provides that Congress shall make no law abridging the right of people to petition the government **for a redress of grievances**. Thus, the district judge's Orders could be perceived to be tantamout to Censonship and/or Dictatorship.

Also, Per Fourteenth Amendment to tne U. S. Constitution, a person may not be deprived of life, liberty, or property without due process of law or denied equal

protection of the laws.

The application of the Due Process clauses of the United States Constitution must be determined in the context of the individual's Due Process liberty interest in freedom from arbitray adjudicative procedures (In re Thomas (1984) 161 Cal.App. 3d 721. 206 CR 719).

We all know "Due Process of Law" requires that a party shall be properly brought into court and that he/she shall have an opportunity, when there, to prove any fact which, according to the condition and the usage of common law, would be a "Protection" to him/her property." (Emphasis added) Goldie v. Goldie, 79 N.Y.S. 268, 269; Larson v. Docky, 58 N.W. 167, 171: Kalloch v. Superior Court of City and County of San Francisco 56 Cal. 229, 239.

In Benjamin Weintraub and Alan N.

Resnick's "Bankruptcy Law Manual", Third Edition, Warren, Gorham & Lamont, page 3-24, paragraph (3) - The time to make an objection - the Manual states:

> "To object to the discharge of a debt, a Creditor must file a written complaint with the Bankruptcy Court. The Complaint must be filed within 60 days of the first date set by the court for the meeting of Creditors."

As Appendix 1 demonstrates, the Order of 1/29/97 was not only unconstitutional, it was also vague, ambigious, and overly broad.

In Petition of General Motors Corp. (1962) 182 N.E.2d 815, the definition of "Meritorious" case is one that is worthy of presentation to court, not one which is sure of success. M.G.L.A.c. 214 Section 28.

The court in the above case further stated that any genuine questions of law were involved in the proccedings below giving rise to a meritorious cause for appeal.

Plaintiff, as Creditors, has every right to object to debtors' fraudulent, dishonest, and false Chapter 7 Bankruptcy Petitions to wipe out plaintiff's judgments against debtors.

The district judge's Orders reflect disregard of federal laws and rules as depicted by the following cases:

In Brown v. Daden (9th Cir. 1987) 815 F.2d 575, the appellate court issued a "Writ of Mandamus" to comple district judge Real compliance with Court of Appeal's decision that district judge Real be replaced by judge randomly selected, because district judge Real's bias, overreaching, and massive sanction imposed against attorney in that action.

In re Matter of Stephen Yagman, Supra, the appellate court, in reversing district judge Real's sanctions against Stephen Yagman, held that district judge Real had

abused his discretion and a new judge should be randomly reassigned.

In U. S. v. Flynt. Supra, the appellate court reversed Larry Flynt's convictions and vacated his sentences after the appellate court found out that district judge Real had abused his discretion when he denied Flynt's motion for continuance and when he resorted to summary contempt proceedings.

CONCLUSION

Based on the foregoing points and authorities and the Declaration of Shong-Ching Tong, plaintiff requests that the court assign the instant case to other District Judge for all law and motion hearings and trial.

DATED: February 27, 1997

/S/

Shong-Ching Tong
Plaintiff Pro Se

DECLARATION OF SHONG-CHING TONG

I. Shong-Ching Tong, hereby declare:

1. Declarant is the plaintiff in the instant case and is familiar with the facts and files in this case and could and would competently testify thereto if called upon to do so.

2. The following facts and evidence can show that district Judge Mauuel L. Real should be disqualified from the instant case:

1) defendants are his judicial colleagues in this court;

2) unlawfully and unconstitutionally issued an order instructing the court clerks not to accept plaintiff's new filing (Exhibit 1).

3. In order for the court to review facts as stated in this motion, declarant hereby requests the court referring to the following Exhibit and document:

1) Order, case no. CV 96-8467-R (BQR), 1/29/97, by district judge Manuel L. Real.

2) Plaintiff's Response to "Order to Show Cause" filed in the instant case.

I declare under penalty of perjury that the foregoning is true and correct. Executed on this 27th day of February, 1997 at Pomona, California.

/S/

Shong-Ching Tong

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHONG-CHING TONG, Plaintiff, vs. JAMES W. MCMAHON, JOSEPH REICHMANN, Defendants.	CASE NO. CV 95-6673-R (BQR) NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF COURT'S RULING RE: MOTION TO DISQUALIFY DISTRICT JUDGE MANUEL L. REAL: MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF SHONG-CHING TONG IN SUPPORT THEREOF DATE: March 31, 1997 TIME: 10:00 a. m. CTRM: 660-Roybal

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 31 1997, at 10:00 a. m., or as soon thereafter as the matter may be heard in Courtroom 660 -Roybal of the above-entitled court, located at 255 E. Temple St., Los Angeles, CA 90012, plaintiff will ask this court for reconsideration of district judge

Goerge H. King's order denying motion to disqualify district Judge Manuel L. Real.

This motion will be made on the grounds that the court has inherent power to change his or her mind and reverse or modify the ruling when there have been new developments that affect the outcome of the motion.

This motion will be based upon this Notice, the attached Memorandum of Points and Authorities and Declaration of Shong-Ching Tong, all of the pleadings, records and evidence on file herein and upon such other and further evidence as shall be presented at the hearing of this motion.

DATED: March 6, 1997

/S/

Shong-Ching Tong,
Plaintiff Pro se

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On February 28, 1997, at about 12:12 p. m., plaintiff filed a motion to disqualify district Judge Manuel L. Real because of his persistent disregard of Federal Rules and Laws, and his abuses of his power in case nos. LA CV 96-8464, SB 96-1022-MG (Exhibit 6), and the instant case.

On March 3, 1997, in spite of the fact that plaintiff's motion to disqualify district judge Real was pending, district judge Real held a hearing regarding his "Order to Show Cause".

On March 3, 1997, at about 1:30 p. m., Mr. Bill Horrell, the courtroom deputy for district judge Real called plaintiff and threatened plaintiff that district judge Real would send Marshal to arrest plaintiff if plaintiff did not go to the hear-

ing on March 5, 1997 at 9:00 a. m..

On March 4, 1997, after telephoned the Staff Attorney of the U. S. Court of Appeals for the Ninth Circuit, plaintiff filed a "Petition for Writ of Mandamus" and an "Emergency Motion" to report Mr. Horrell's intimidation and harassment (Exhibit 3).

On or about March 4, 1997, plaintiff received the "Referral of Motion to Disqualify Judge/Magistrate Judge" and learned that on February 28, 1997, plaintiff's motion has been assigned to district judge Goerge H. King by the Clerk's Office (Exhibit 4) for a ruling.

On or about March 5, 1997, plaintiff received the "Civil Minutes - General" dated February 28, 1997 and mailed on March 3, 1997 denying plaintiff's motion to disqualify district judge Real (Exhibit 5).

Because of the aforesaid harassment and intimidation by Mr. Horrell and newly discovered evidence showing district judge's bias, prejudice, overreaching, plaintiff hereby submits this Motion for Reconsideration re the 2/28/97 ruling denying Motion to Disqualify district judge Real from the instant case.

II.

MOTION FOR RECONSIDERATION SHOULD BE GRANTED BECAUSE OF DISTRICT JUDGE REAL'S IGNORANCES OF RULES AND LAWS

Pursuant to Rule 7.16 of the U. S. District Court, Central District of California (CD CA), the court has inherent power to reverse the ruling when there have been material difference in fact and have new material facts.

As Exhibit 6 shows (Proceedings re case no. SB 96-1022-MG, the "Proceedings"

was received by plaintiff late and was unable to include in the plaintiff's motion to disqualify district judge Manuel L. Real), the case no. SB 96-1022-MG is on appeal and, as a Creditor, plaintiff awarded judgment and district judge Real should not told the Bankruptcy Court Clerk's Office to include his unconstitutional order in the file.

As Exhibits 4 and 5 depict, if the court could dispose of plaintiff's Motion to Disqualify district judge Real within a very short time and without any hearing, then, there is no reason for district judge Real not to rule on defendants', James W. McMahon and Joseph Reichmann, motions since February 13, 1996.

III.

MOTION FOR RECONSIDERATION SHOULD BE GRANTED BECAUSE OF MR. BILL HORRELL'S

HARASSMENT AND INTIMIDATION

Local Rules 7.11 and 27.1 of CD CA and F.R.C.P. 78, which state that oral argument in Civil Law and Motion cases for the most part is not helpful to the court and is wasteful of the time of the court and of counsel. A well-researched and thoughtful brief is generally of more value to the court.

The District Court's GUIDELINES declare that we will not employ abusive, demeaning, or humiliating language in opinions or in written or oral communications with attorneys, parties, or witnesses: Above all, we will remember that the court is the servant of the people, and we will approach our duties in this fashion.

As Exhibit 1 depicts, district judge Real has shown his ignorance of the Appellate Court's concerns as expressed in U. S.

v. Flynt (9th Cir. 1985) 756 F.2d 1352. in providing for the randomly assignment of cases, the General Order evinces a policy of objectivity in the administration of all matter . . . that . . . is important to the fair administration of justice.

Moreover, Mr. Horrell, as a courtroom deputy, should send a "Civil Minutes" re the hearing held on March 3, 1997. Otherwise, Mr. Horrell should not threaten plaintiff with an arrest.

Since district judge Real and his courtroom deputy have shown bias, prejudice, and hostility toward plaintiff, district judge Real should be disqualified from the instant case.

IV.

CONCLUSION

In light of the foregoing points and authorities and the Declaration of Shong-

Ching Tong, plaintiff requests the court to reverse the order denying motion to disqualify district judge Manuel L. Real and to randomly reassign the instant case to other Judge for further proceedings.

DATED: March 6, 1997

/S/

Shong-Ching Tong
Plaintiff Pro Se

DECLARATION OF SHONG-CHING TONG

1. I, Shong-Ching Tong, hereby declare that I am over the age of 18 years and the plaintiff Pro Se in the above-cited action. I am familiar with the records and files in this case and could and would competently testify thereto if called upon to do so.

2. In order for the court to review the facts and evidence in support of plain-

tiff's Motion for Reconsideration, declarant hereby submits the following Exhibits and marked as Exhibits 3 thru 6:

1) Exhibit 3 - Receipt of the Express Mail, 3/4/97, To: Office of the Clerk, U. S. Court of Appeals;

2) Exhibit 4 - Referral of Motion to Disqualify Judge/Magistrate Judge" and Envelop, meter date - 3/3/97

3) Exhibit 5 - Civil Minutes - General, dated 2/28/97, date of mailing - 3/3/97, and Envelop

4) Exhibit 6 - Proceedings showing on 2/13/97 re case no. SB 96-1022-MG, U. S. Bankruptcy Court, district judge Real sent his unconstitutional Order

   Judgment, case no. SB 96-1022-MG, 12/20/96

   Findings of facts and Conclusions of Law, case no. SB 96-1022-MG, 12/20/96.

I declare under penalty of perjury that the foregoning is true and correct. Executed on this 6th day of March, 1997 at Pomona, California.

/S/

Shong-Ching Tong